IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRI.APPLICATION NO.4583 OF 2005
WITH
CRI.APPLICATION NO.4545 OF 2005
TO
CRI.APPLICATION NO.4582 OF 2005
WITH
CRI.APPLICATION NO.4584 OF 2005
TO
CRI.APPLICATION NO.4594 OF 2005

Shri.V.N.Nadkarni ..Applicant

Vs.

State of Maharashtra & Anr. ..Respondents

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Mr. A.H.H.Ponda Advocate for Applicant
Mr. Y.S.Shinde A.P.P. for the State in
Cri.Appl.Nos.4545/05, 4551/05, 4555/05, 4564/05,
4570/05, 4575/05, 4582/05, 4587/05 and 4593/05.
Mr.M.S.Mhambre A.P.P. for State in
Cri.Appl.Nos.4546/05, 4543/05, 4559/05, 4565/05,
4571/05, 4577/05, 4583/05 and 4589/05.
Mr.S.R.Shinde A.P.P. for State in
Cri.Appl.Nos. 4548/05, 4554/05, 4560/05, 4566/05,
4572/05, 4578/05, 4584/05 and 4590/05.
Mr.D.P.Adsule A.P.P. for State in
Cri.Appl.Nos. 4550/05, 4556/05, 4560/05, 4569/05,
4574/05, 4580/05, 4586/05 and 4592/05
Mr.V.B.Konde-Deshmukh A.P.P. for State in
Cri.Appl.Nos. 4549/05, 4557/05, 4561/05, 4568/05,
4573/05, 4579/05, 4585/05 and 4591/05
Smt.S.V.Gajare A.P.P. for State in
Cri.Appl.No.4547/05, 4552/05, 4558/05, 4563/05,
4567/05, 4576/05, 4581/05, 4588/05 and 4594/05.
Ms.Rohini Wagh for Respondent No.2

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CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : AUGUST 5,2005

P.C.

1. Heard the learned advocate for the applicant and the learned Advocate for the Respondent no.2 i.e. original complainant in all the matters.

2. The applicant is seeking quashing of process issued by the learned Spl.M.M.Mumbai in C.C.Nos.2111/S/2002 (Old Case No.1568/S/1998), 4434/S/2002 (Old case No.1764/S/98), 4422/S/2002 (Old Case No.1555/S/98), 2094/S/2002 (Old Case No.1592/S/98), 2110/S/2002 (Old Case No.1569/S/98), 1842/S/2002 (Old Case No.1608/S/98), 4432/S/2002 (Old Case No.1762/S/98), 1832/S/2002 (Old Case No.1618/S/98), 2109/S/2002 (Old Case No.1570/S/98), 1837/S/2002 (Old Case No.1604/S/98), 4441/S/2002 (old Case No.1771/S/98), 2089/S/2002 (old case no.1583/s/98), 4412/S/2002 (old case No.1545/S/98), 2097/S/2002 (old case no.1589/S/98), 1827/S/2002 (old case no.1600/S/98), 1847/S/2002 (old case no.1595/S/98), 2093/S/2002 (old case no.1593/S/98), 4420/S/2002 (old case no.1553/S/98), 1835/S/2002

(old case no.1606/S/98), 4445/S/2002 (old case no.1775/S/98), 2108/S/2002 (old case no.1571/S/98), 1830/S/2002 (old case no.1602/S/98), 4429/S/2002 (old case no.1562/S/98), 2095/S/2002 (old case no.1591/S/98), 4436/S/2002 (old case no.1766/S/98), 2112/S/2002 (old case no.1567/S/98), 1844/S/2002 (old case no.1598/S/98),1829/S/2002 (old case no.1613/S/98), 1852/S/2002 (old case no.1614/S/98), 2102/S/2002 (old case no.1565/S/98), 1846/S/2002 (old case no.1596/S/98), 2096/S/2002 (old case no.1590/S/98), 1848/S/2002 (old case no.1612/S/1998) 2101/S/2002 (old case no.1566/S/98), 2103/S/2002 (old case no.1564/S/98), 1839/S/2002 (old case no.1611/S/98), 4433/S/2002 (old case no.1763/S/98), 1840/S/2002 (old case no.1610/S/98), 1845/S/2002 (old case no.1597/S/98), 2088/S/2002 (old case no.1581/S/98), 4427/S/2002 (old case no.1560/S/98), 1831/S/2002 (old case no.1619/S/98), 1841/S/2002 (old case no.1609/S/98), 4442/S/2002 (old case no.1772/S/98), 2090/S/2002 (old case no.1582/S/98), 1843/S/2002 (old case no.1599/S/98), 4435/S/2002 (old case no.1765/S/98), 1851/S/2002 (old case no.1601/S/98), 4421/S/2002 (old case no.1554/S/98) and 4439/S/2002 (old case

no.1769/S/98). In the said cases process is issued under Section 138 of N.I.Act.

3. The applicant had preferred applications for recalling of process before the learned Magistrate. The learned Magistrate has rejected the said applications. In view of the decision of the Supreme Court in the case of **Adalat Prasad Vs. Rooplal Jindal reported in 2004(4) Mh.L.J.274**, it is clear that the Magistrate has no power to recall the process. In this view of the matter though the Magistrate has rejected the applications for recall of process, I am not inclined to interfere with the said order.

4. However, for the reasons recorded in my order dated 13th June, 2005 in W.P.No. 213 of 2005 and dated 21st June, 2005 in Cri.Application No.550 of 2005, I am of the opinion that the applicant has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the applicant prefers revisions before the concerned Sessions Court against the order of the Magistrate issuing

process.

5. Liberty is granted to the applicant to prefer the necessary revisions before the concerned Sessions Court. The learned advocate for the applicant makes a statement that the necessary revisions will be preferred within five weeks from today. In view of this statement, the trial Court shall not proceed with the trial for a period of five weeks. The learned advocate for the respondent-original complainant fairly states that no objection will be raised in respect of filing of revisions.

6. It is made clear that the revisions shall be preferred in respect of order of the Magistrate issuing process and not in respect of order rejecting the applications for recall of process.

7. On the necessary revisions being preferred by the applicant before the concerned Sessions Court, the concerned Sessions Court shall dispose of the matter on merits after hearing the necessary parties.

8. Criminal Applications are disposed of.

9. Authenticated copy be issued to the parties.

[V.K.TAHILRAMANI,J.]